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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,486	12/28/2001	Wilhelmus Johannes Everardus Van Den Dungen	3135-011126	1769

34082 7590 05/03/2004

ZARLEY LAW FIRM P.L.C.
CAPITAL SQUARE
400 LOCUST, SUITE 200
DES MOINES, IA 50309-2350

EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/890,486	VAN DEN DUNGEN ET AL.	
	Examiner	Art Unit	
	Drew E Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 April 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *31-57* is/are pending in the application.

4a) Of the above claim(s) *31-46* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *47-57* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims 31-46 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 57 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 57 provides for the use of "dry collagen", but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. Furthermore, "dry collagen" is already recited in parent claim 49.

Claim 57 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 47-48 and 52-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/13729 in view of WO 93/12660.

WO 99/13729 teaches a method of making sausages by co-extruding meat and a skin (page 11, lines 32-38), separating the sausage string into separate units (page 12, line 5), then subjecting the units to a coagulation treatment with liquid smoke (page 12, line 36), WO 99/13729 does not recite the skin being 8-10% collagen and a pre-coagulation treatment. WO 93/12660 teaches a method of making sausage by co-extruding meat and collagen (page 3, lines 3-5), the use of 4-10% collagen (page 6, line 4), and coagulation prior to separation (page 3, line 12 to page 5, line 14) . It would have been obvious to one of ordinary skill in the art to incorporate the collagen and pre-treatment of WO 93/12660 into the invention of WO 99/13729 since both are directed to sausage making, since WO 99/13729 already included co-extrusion (page 11, lines 32-38) and coagulation (page 12, line 36), since collagen was a commonly used material for sausage skin as shown by WO 93/12660, and since the pre-treatment of WO 93/12660 would have further strengthened the sausage of WO 99/13729 and thus prevented possible damages during processing.

7. Claims 49-51 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/13729, in view of WO 93/12660, as applied above, and further in view of Henderson et al [Pat. No. 3,551,535].

WO 99/13729 and WO 93/12660 teach the above mentioned concepts. WO 99/13729 and WO 93/12660 do not teach the use of dry, fibrous collagen. Henderson et al teach a method of making sausage skins by use of dry, fibrous collagen (column 6, Example I). It would have been obvious to one of ordinary skill in the art to incorporate the dry, fibrous collagen of Henderson et al into the invention of WO 99/13729, in view of WO 93/12660, since all are directed to sausage making, since WO 99/13729 already included co-extrusion of a skin (page 11, lines 32-38), since WO 93/12660 already included co-extrusion of collagen with additives such as coagulants and cross-linking agents (page 3, line 1 to page 5, line 15), and since the dry collagen of Henderson et al prevented air pockets and provided improved homogenization as compared to conventional collagen skins (column 1, lines 30-73).

8. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/13729, in view of WO 93/12660, as applied above, and further in view of Kobussen et al [Pat. No. 6,054,155].

WO 99/13729 and WO 93/12660 teach the above mentioned concepts. WO 99/13729 and WO 93/12660 do not teach the use of dipotassium phosphate. Kobussen et al teach a method of making sausage by using dipotassium phosphate as a coagulant (column 3, line 20). It would have been obvious to one of ordinary skill in the art to incorporate the dipotassium phosphate of Kobussen et al into the invention of WO

99/13729, in view of WO 93/12660, since all are directed to sausage making, since WO 99/13729 already included coagulation with liquid smoke (page 12, line 360, and since dipotassium phosphate was a commonly used coagulant in sausage making as shown by Kobussen et al.

Response to Arguments

9. Applicant's arguments filed April 22, 2004 have been fully considered but they are not persuasive.

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art to incorporate the collagen and pre-treatment of WO 93/12660 into the invention of WO 99/13729 since both are directed to sausage making, since WO 99/13729 already included co-extrusion (page 11, lines 32-38) and coagulation (page 12, line 36), since collagen was a commonly used material for sausage skin as shown by WO 93/12660, and since the pre-treatment of WO 93/12660 would have further strengthened the sausage of WO 99/13729 and thus prevented possible damages during processing.

Applicant argues that WO 99/13729 does not teach coagulation after separation. However, WO 99/13729 clearly teaches separating the sausage links (Figure 1, #2), applying liquid smoke (Figure 1, #7), then drying the sausage in the lower half of the

dryer (Figure 1, #6). In addition, applicant's claim 55 lists "liquid smoke" as a preferred coagulant. Although WO 99/13729 does not specifically recite coagulation, it was an inherent effect.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker
Primary Examiner
Art Unit 1761

4-30-04